

REDACTED

**SUBMISSION TO
THE UNITED STATES NATIONAL
ADMINISTRATIVE OFFICE
(NAO)**

**REGARDING IMPENDING IRREPARABLE HARM AGAINST THE
RIGHT TO FREEDOM OF ASSOCIATION, PROTECTION OF THE
RIGHTS TO ORGANIZE AND THE RIGHT TO BARGAIN
COLLECTIVELY AND PERSISTENT PATTERN OF FAILURE TO
ENFORCE LABOR LAW:**

**THE CASE OF HAN YOUNG DE
MEXICO, S.A. DE C.V.
in
TIJUANA, MEXICO**

Submitted by

International Labor Rights Fund
Support Committee for Maquiladora Workers
Asociacion Nacional de Abogados Democraticos
Sindicato de Trabajadores de la Industria Metalica, Acero,
Hierro, Conexos y Similares

October 28, 1997

**SUBMISSION TO THE U.S. NATIONAL ADMINISTRATION OFFICE (NAO)
BUREAU OF INTERNATIONAL LABOR AFFAIRS
UNITED STATES DEPARTMENT OF LABOR**

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In re:)
)
Han Young de Mexico,)
S.A. de C.V.)
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_____)

I. Introduction

The North American Agreement on Labor Cooperation (NAALC) established between the Governments of the United States of America, Canada and the United Mexican States in 1993 established certain obligations between the above listed Parties as procedural guarantees toward stated objectives which include fostering transparency, fairness and equity in the administration of labor law and promoting compliance with, and effective enforcement by each Party of its labor law.

This submission to the U.S. NAO concerns practices of the Tijuana Conciliation and Arbitration Board involving its "Special Board #1" (hereinafter "CAB") which was responsible for the oversight of the union election involving workers at Han Young de Mexico, S.A. de C.V. (hereinafter "Han Young") between the independent union formed by workers which is affiliated with Sindicato de Trabajadores de la Industria Metalica, Acero, Hierro, Conexos y Similares (hereinafter "STIMAHCS") and Union de Trabajadores de Oficios Varios "Jose Maria Larroque," C.R.O.C. (hereinafter CROC). The submission documents:

- (1) Han Young management's persistent violations of workers' rights, particularly in the area of freedom of association and the right to organize;
- (2) the responsibility as defined under Mexican Labor Law [Article 14-15] of the company, Hyundai Precision America (hereinafter "Hyundai") for the violations of Mexican Labor Law at the Han Young facility
- (3) a history of attacks against union activists including firings, surveillance, harassment, offers of money or threats;
- (4) the Mexican government's pattern of persistent failure to promote compliance with applicable Mexican labor laws in a timely manner to protect the right to organize or provide remedies for violations of its labor law;
- (5) the CAB's apparent collusion with representatives of the CROC and Han Young management to defy workers' right to organize themselves into a union of their own

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The petitioners urge the U.S. NAO to:

- (1) hold public hearings on this matter in Tijuana;
- (2) conduct an investigation in San Diego and Tijuana; and
- (3) take steps to assure that Mexico will secure Han Young's compliance with Mexican and international law, including reinstatement of workers unjustly dismissed, certification of the STIMAHCS election victory, and pursuit of negotiations for a collective bargaining agreement between STIMAHCS and Han Young. Considering that the current circumstances, if allowed to continue, would constitute a situation of irreparable harm against the Han Young workers' right to organize, petitioners call upon the U.S. NAO to move rapidly to communicate with the companies Hyundai and Han Young and the CAB to assure a halt to company activities to replace all workers voting for STIMAHCS representation.

II. The Petitioners

1. THE SUPPORT COMMITTEE FOR MAQUILADORA WORKERS (SCMW) is a non-profit organization involving primarily voluntary efforts of community, women's rights and labor activists dedicated to supporting maquiladora workers in the Tijuana region who are organizing to improve their living and working conditions. Founded in 1993, in cooperation with concerned citizens and organizations throughout the U.S., SCMW efforts include: organizing actions and campaigns to bring public pressure to bear against violations of workers' rights by U.S. and Asian-based transnational corporations, providing publicity for maquiladora workers' struggle for living wages, health and safety on the job, and an end to toxic dumping in their neighborhoods and supporting Tijuana community leaders and others involved in educating workers as to their rights under Mexican labor law and in advocating for defense of workers' rights.

2. THE INTERNATIONAL LABOR RIGHTS FUND (ILRF) is a non-profit organization representing human rights, labor, religious, consumer, academic, and business groups dedicated to assuring that all workers labor under reasonable conditions and are free to exercise their rights to associate, organize and bargain collectively. Founded in 1986, ILRF is committed to environmentally sound development that promotes broad-based economic growth and equitable distribution of wealth. Supported by contributions and foundation grants, ILRF works to advance trade, investment and aid policies that promote worker rights around the world. ILRF carries on research, publishing, education and advocacy projects to advance international fair labor standards.

3. THE ASOCIACION NACIONAL DE ABOGADOS DEMOCRATICOS (National Association of Democratic Lawyers, ANAD) is a network of legal professionals in Mexico committed to providing legal services, analysis and litigation in the defense of democracy and human rights. Its approximately 230 members include some of the most prestigious human rights

authorities in Mexico, including noted specialists in labor law, arbitration, and collective bargaining.

4. EL SINDICATO DE TRABAJADORES DE LA INDUSTRIA METALICA, ACERO, HIERRO, CONEXOS Y SIMILARES (Union of Metal, Steel, Iron and Allied Workers, STIMAHCS) is an independent union registered nationally with locals representing workers in domestic industry which agreed to permit the Han Young workers' union to affiliate with it to gain the right to collective bargaining with Han Young.

III. Jurisdiction

(a) The submission is brought pursuant to the North American Agreement on Labor Cooperation [hereinafter "NAALC"], Part Two, Section C, and in accordance with the procedures set forth in the Revised Notice of Establishment of U.S. National Administrative Office and Procedural Guidelines, 59 Fed. Reg. 16, 660 (Apr. 7, 1994) [hereinafter "U.S. NAO Regulations"].

The matters described in this complaint meet the requirement of Section F of the U.S. NAO Regulations. They demonstrate action inconsistent with Mexico's obligations under Part II of NAALC in the following five ways: First, the Mexican government has failed to "ensure that tribunals that conduct or review (labor) proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter." [Article 5.4]; second, it has failed to "ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent" [Article 5.1]; third, it has failed to see that labor "proceedings...do not entail...unwarranted delays" [Article 5.1(d)]; fourth, it has failed to provide that final decisions on the merits of the case in (labor) proceedings are made available without undue delay to the parties to the proceedings [Article 5.2(b)]; and fifth, it has failed to "effectively enforce its labor law" regarding protection of workers rights to organize by failing "through appropriate government action such as initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law" [Article 3.1(g)].

(b) Han Young's illegal actions, including its unjustifiable firings of union activists, have significantly harmed the workers involved, both individually and collectively, by denying them their rights under the law to freedom of association, impartial treatment by the labor authorities, fair enforcement of labor standards regarding working conditions and protection from retaliation against legitimate union organizing activities.

(c) Han Young's announced plan, already underway, for further illegal actions involving continued firings until all STIMAHCS supporters are fired and replaced with workers hired from Vera Cruz would constitute irreparable harm to its workers.

(c) The matters complained of demonstrate a persistent pattern of non-enforcement of Mexican labor laws by Mexican labor authorities. Under Section G(2) of the U.S. NAO Regulations, the

Secretary "shall accept a submission for review if it raises issues relevant to labor law matters in the territory of another party and if a review would further the objectives of the agreement."

The objectives of the NAALC, stated in Part I, Article I of the NAALC include to "promote compliance with, and effective enforcement by each Party of its labor law; and foster transparency in the administration of labor law."

In the case of Han Young, the Mexican government has failed to enforce:

(1) Article 123 of the Constitution of the Republic of Mexico, which assures the right of free association;

(2) Mexican Federal Labor Law, in the following Articles:

Article 3, which prohibits discrimination against workers and demands respect for the freedom and dignity of workers to healthy and safe working conditions with a decent level of economic compensation for the worker and his family;

Article 14 which states that persons (such as Hyundai) who use intermediaries (in this case, Han Young) to contract workers are responsible for obligations specified under the law in regard to the services used;

Article 15 which states that companies that engage in work or services exclusively or principally for another (such as Han Young), and that do not make arrangements for proper or sufficient elements in conformance with the disposition of Article 13 (which states that businesses shall be considered management rather than intermediaries if they have their own sufficient resources to comply with their obligations toward their employees, and that they shall be solely responsible for those obligations), the company benefited (in this case Hyundai Precision America) will be solely responsible for the contractual obligations with the workers;

Article 931, which defines the conduct of elections between two unions, entitles only employees the right to vote and denies "trabajadores de confianza" or management and administrative personnel the right to vote as well as those hired after the filing of the action for recognition to bargain collectively;

Article 47, which defines the causes for legitimate firings and states that the employer must give the employee notice of termination in writing indicating the reasons for termination;

Article 117 and 123 -125, which defines the workers' right to profit sharing payments and mandates the formation of a commission of representatives of employees and employer to determine the share of each worker in the profit sharing and to post the formulas determined in a visible location in the plant, with the commission taking any workers' objections;

Article 357-359, which establishes the right of employees and employers to form unions without prior authorization, states that no one can be obligated to join a union or to refrain from joining one and establishes the right of unions to organize their administration and activities and formulate their program of action;

Article 424, 509 - 510 which establish the necessity for a plant to have a *comision mixta* or commission made up of management and worker representatives to investigate causes of accidents and illnesses in the plant;

Article 512 which deals with the necessity for labor authorities take measures necessary to prevent occupational hazards and assure healthy and safe working conditions;

Article 132, which defines obligations of management, including refraining from verbal or physical mistreatment, providing preventive measures against occupational hazards and complying with health and safety laws and regulations to prevent accidents and illnesses in work areas;

Article 133, which prohibits management from obligating workers through coercion or other means to affiliate with or quit the union to which they belong;

Article 85, which obligates the employer to pay workers the salary agreed to according to law;

Article 106, which states that the employer cannot stop paying a worker except in cases meeting the requirements established by law;

Article 88, which states that the terms of pay cannot be longer than a week for production workers;

Article 86, which states that equal work done under equal conditions needs to receive equal pay;

Article 600, which defines the obligation of the CAB to denounce before the Public Minister management of businesses that don't pay the minimum wage to one or a number of workers;

Article 722, which states that declarations by any person before the CAB must swear to tell the truth under penalty of perjury;

Article 1000, which defines fines to be determined against employers who violate the law regarding remuneration to employees;

Article 1006 which requires that all those who present false testimony to the CAB are imprisoned and fined;

Article 158 which defines seniority rights; and

Article 159, which defines how employers are to promote workers in accordance with work categories, experience, seniority and training.

(3) Convention 87 of the International Labor Organization (ILO), which guarantees the right to organize free trade unions, and which Mexico has formally ratified, thus making the convention and the principles stated therein part of its domestic law; and

(4) ILO Convention 98, which guarantees the right of organization and collective bargaining, and which is binding on Mexico as a member of the ILO.

(d) Petitioners affirm that appropriate relief has been sought under the domestic law of Mexico by employees directly affected by the illegal and unfair labor practices set forth in this complaint; specifically through eleven actions requesting reinstatement for illegally fired workers with three of these actions also demanding unpaid wages of up to three weeks prior to the illegal firing, an action filed in the criminal courts against a Han Young manager for physically assaulting a worker involved in the independent union, an action filed to keep the same Han Young manager from leaving the country to escape prosecution, an action demanding the right to represent Han

Young workers in collective bargaining that resulted in a union election which the CAB has failed to certify and an action filed in the criminal court regarding the perjury of new hires before authorities at the union election as to their date of entry. However, these legal actions, except for two actions regarding reinstatement wherein the complainants accepted severance pay, remain unresolved and the manner in which the Mexican authorities have conducted their oversight and intervention in the union election forms part of the gravamen of the complaint as said conduct has not resulted in adequate remedies that require proper enforcement of the law as required under the NAALC.

(e) Petitioners further affirm that neither the matter or any related matter which forms the subject of this complaint is pending before any international body.

(f) Review by the U.S. NAO of this case would further the objectives of the NAALC by demonstrating that the persistent ignoring of corporate violations of labor principles will be seriously addressed by the parties to the NAALC. Such attention to redress would create confidence among workers in Mexico, the United States, and Canada that their rights will not be ignored, especially in situations where their own government is fostering such violation of labor rights.

IV. Statement of Facts

Han Young is one of five maquiladoras that serve as feeder plants in Baja California for Hyundai Precision America. Han Young workers do welding and assembly of chassis and platforms for tractor trailer trucks for Hyundai Precision America which contracts with the U.S. Marines, Matsen, Transamerica and other U.S. concerns. Han Young has for some years had a contract with the CROC which is affiliated with the Partido Revolucionario Institucional (PRI) [Revolutionary Institutional Party]. Its General Secretary Luis Antonio Parada Ruiz is reported by Han Young workers to have come to the plant every two weeks to pick up a check from Han Young management. As of April 1997, the CROC had never held a meeting with workers, never shown workers a copy of their contract with Han Young, and did not make its existence as contractual representative known to the workers.

Starting in April of 1997, workers within the Han Young maquiladora began to organize their own independent union. The major concerns of these workers involved (a) occupational health and safety, including complaints of illness, burns, injuries such as broken bones and loss of vision due to lack of basic protections such as a ventilation system, safety shoes, glasses, gloves, masks and facial shields; (b) lack of defined job categories and corresponding pay scales that take into account experience, level of training, skill and seniority, meaning that each workers' pay was determined individually by management on the basis of personal favoritism; (c) low wages, with many welders, welder's assistants and assembly workers earning \$19 to \$30 for a 48 hour week (See Exhibit A), necessitating many workers to have a second job beyond their 48 hours or more with Han Young in order to support their families; (d) with profit sharing payments expected at the end of May, a pattern of failure by Han Young in the past to follow the

laws regarding profit sharing and end-of-the-year bonus; (e) fear of reprisals by the company against their independent union effort; (f) lack of a kitchen available for workers to eat their lunch (workers were sitting on the sidewalk or in a nearby parking lot to eat); (g) lack of a company doctor available to treat workers with illnesses and injuries in the plant.

By May 30, the day that Han Young was supposed to pay 10% profit sharing bonus to its workers as required by Mexican Labor Law, 75% of the workers had signed to join a coalition to form an independent union. On May 30, Han Young paid between 38.85 and 257 pesos (\$4.94-\$32.73) profit sharing to production workers depending on base pay of each worker (see attached Exhibit B, "Han Young de Mexico Determinacion de Reparto" or "Han Young de Mexico Determination of Distributions").¹ Since workers knew they were producing more than 26 chassis or platforms a day that sell for \$1,800 each using relatively inexpensive recycled materials, they did not believe that the total amount of profit sharing -- 27,936.19 pesos or \$3,558.75 -- could constitute 10% of the Han Young profits for 1996. They were also upset that the company had failed to follow the law in its profit sharing distribution. No commission involving employee representation had been involved in developing the formulas for profit sharing and the formulas had not been posted in a location where workers could see them. Further there were some workers who received no profit sharing at all. (Note names on Exhibit B lacking signatures in the final column to indicate they received their share.)

On Friday, May 31 the workers held a meeting of their coalition and elected an ad hoc executive committee. They decided to protest the company's failure to fulfill its legal obligations toward profit sharing -- raising this and nine other demands (see attached Exhibit C, "Pliego de Peticiones" or "Document of Petitions") and not entering to work, Monday, June 2. Representatives of the Executive Committee went to the CAB and arranged for a hearing for 8:30 AM June 3 (See attached Exhibit D, "CAB Memorandum 2 Junio 1997") to discuss the violations of Federal Labor Law raised in their 10 point petition.

Han Young manager WonYoung "Pablo" Kang told the workers on the morning of June 2 that he had just called a representative of the CROC to come to talk to them in the afternoon to resolve their problems. Later in the afternoon Luis Antonio Parada Ruiz General Secretary for the CROC arrived. Parada informed the workers that he heard about the workers' complaints and thus had on May 28 filed a petition for a strike with the CAB (See Exhibit E "CROC Strike Petition"). He further announced that the company was required to respond to the petitions in a hearing before the CAB June 6 (See Exhibit F "Hearing on CROC Petitions"), and if the company did not comply with the petitions, the CAB had already authorized a strike for June 13 at 2 PM. After document "Exhibit E" was read aloud to the workers, they responded angrily. "How could you file a petition on our behalf which says we agreed to bring this document of petitions to the employer charging violation of the contract when we had never seen a contract, and you never consulted with any of us as to our petitions?," they wanted to know. The three

¹Note: this document was only posted by management after the protest described later.

petitions listed in the CROC document seek uniform compliance by the company with the law regarding December vacations and the distribution of profit sharing bonuses as required by law. The workers told him they had their own list of petitions that they had already brought to the CAB that morning and that they had never authorized his action on their behalf as stated in his document (Exhibit E). The workers made very clear that they did *not* believe the CROC petition before the CAB was representative of their demands or interest and told Parada to leave, which he did.

On the morning of June 2, when representatives of the Han Young workers' Executive Committee arrived at the CAB for their 8:30 appointment, the attorney for Han Young, Ricardo Estrada, informed Jose Angel Penaflor, attorney for the Han Young workers, that he and Han Young management were interested in talking and had set a time for talks at 1:30 PM with the CAB (See Exhibit G, "Reclama-Platicas" or "Protest-Talks"). They requested however to meet in a location other than the CAB if the workers were willing to discuss their demands in an informal setting. An agreement was reached that talks would be held at noon at the law office of Jose Angel Penaflor.

Talks were held at which were present the members of the Executive Committee, attorneys for the workers Jose Angel Penaflor and Eduardo Hernandez, attorney for Han Young, Ricardo Estrada and Han Young manager Won Young "Pablo" Kang. After hearing the workers' petitions, Estrada and Kang appeared extremely conciliatory. Each of the points of petition was discussed with positive commitments made toward each one by Estrada and Kang, including that there will be no intervention, repression or intimidation used by the company against workers' efforts to gain government recognition for their own union (See Exhibit H "Preliminary Agreement"). These agreements were filed with the CAB and with the Sub-Direc. de Trabajo on June 3.

The workers agreed they would work the next day. Estrada acknowledged that the cause of the workers' protest was management's failure to comply with any of its own agreements. He stated that while he knew that his client did not have the authority to decide on behalf of the company, he would recommend that Han Young pay workers their bonus for full weekly attendance even though they had missed two days of work. He acknowledged that the problems between labor and management were due to lack of dialog between workers and management regarding grievances and a pattern of practice on the part of management to make promises and never keep them. He stated that although management would like to recognize the Executive Committee, it would be difficult to meet with twelve workers regularly. He requested that the Executive Committee elect three of its members to be empowered to act as representatives with management to present grievances on a day-to-day basis within the plant. The three elected as delegates were Emetario Armenta Escalante, Guadalupe Yanez Bernal and Jaime Garcia Barron.

Estrada stated that all of the workers demands were very reasonable and that, although neither he nor his client were empowered to sign any agreements on behalf of the company, they guaranteed that they would carry out all actions agreed to regarding the workers' petitions in

good faith. Further, he stated that if there was a failure to comply with these preliminary agreements, they understood that the workers would begin their protest again and that he would encourage management to handle any grievances in regard to lack of compliance expeditiously.

By the end of the day June 3, 90% of the workers had signed to form their own coalition to establish an independent union. On June 11, Kang signed an agreement with the delegates and with his attorneys stating the company would pay for one day of missed work and the full attendance bonuses even though there had been two days of no work (See Exhibit I "Convenio").

On June 5 talks were held at the CAB between Han Young management and the Delegates in which certain additional agreements were reached (See Exhibit J, "Soluciones y Acuerdo").

On June 16, an extraordinary health and safety inspection was done at the plant by inspectors from the Federal Labor Delegation in the State of Baja California (See Exhibit K, "Acta de Inspeccion"). As written in the inspection report, the company claimed there was no union at the plant and named Emetario Armenta Escalante as a representative designated by the workers. The company also admitted there was no *comision mixta*. Delegate Jaime Garcia Barron was nominated by the management to act as a witness to the inspection on behalf of the workers. Twenty-four measures were ordered by inspectors to comply with health and safety laws and regulations as noted in Exhibit K.

On June 18, the company allowed a *comision mixta* or commission of employee and employer representatives to be elected to investigate health and safety protection in the plant as was agreed on June 3 (Exhibit L, List of *Comision Mixta*, signed by Han Young manager Kang). Between June 4 and July 23, workers' demands for shoes, masks, gloves and a kitchen were partially met, but the company had not kept its agreements at all in regard to other demands; never presenting its proposal for wage increase nor establishing job categories with corresponding wage scales. It had posted the statement of profit sharing, but no commission was elected to hear workers' objections to the determinations. While it had provided a space it called a kitchen, there was no grill or stove to heat food. While the company provided masks they did not provide new filters in a timely manner and there were not enough masks and no ventilation system had yet been installed. The delegates complained to management, but no action was being taken.

On July 15 Han Young workers met with Benedicto Martinez Orozco, Secretary General of STIMAHCS to discuss the possibilities of affiliation of their own effort for an independent union with STIMAHCS, which already had a national registration. They read aloud the STIMAHCS constitution and by-laws and voted unanimously to affiliate.

On July 18, at the request of Han Young workers, volunteers from the University of California at Berkeley Labor Occupation Health and Safety (LOSH) Program provided a training for members of the Executive Committee and *Comision Mixta* on how to identify occupational hazards and preventive measures necessary in order to enable them to fulfill their role under

Federal Labor law to investigate causes of accidents and illnesses in the plant. They assisted the workers with drafting a document on prevention of accidents, injuries and illness of workers at Han Young to go to management based on the investigations of members of the health and safety commission (Exhibit M, "Comision Mixta").

In mid-July the company hired a new director of human resources, Luis Manuel Escobedo Jimenez. He was said to be an expert in "psychological warfare" against union organizing. He and manager Kang met with the delegates on July 23, reached various agreements as to compliance with the June 3 accords and that management would meet with the delegates each Thursday after work to discuss progress of company compliance with worker demands. (See Exhibit M, "Agreements of July 23.")

On July 24 the company, primarily through the activities of Luis Escobedo, began a campaign of harassment, intimidation and attack against supporters of the independent union. Escobedo began to offer workers raises to quit their union activities. He tried to divide the workers and create distrust by such daily tactics as calling certain workers he believed to be in the Executive Committee in to the manager's office to be berated, insulted and threatened, while starting rumors through the plant that they are informing on other union members and taking pay-offs from the management. Members of the Executive Committee were repeatedly called into his office, where they were threatened and intimidated.

By July 25 when a document (See Exhibit N) had been readied for the health and safety commission to submit to management based on their investigations with the help of analysis on ways to prevent illnesses, accidents and hazards on the job from experts at UCLA LOSH, health and safety commission members stated it they could not present the document to management. Comision Mixta members stated at a worker meeting July 25 that they feared they would be fired if they were to carry out their roles as provided under Federal Labor Law Article 509 as the atmosphere in the company in the previous day had changed from one of acceptance to open hostility toward their role by management. The document was never submitted to management; however the concerns it raised were discussed in an August 21 letter to Han Young management by UCLA LOSH experts (See Exhibit O) to which management never responded.

On July 31 Executive Committee member and delegate [REDACTED] was suspended for 4 days. He was told it is as "punishment" for his union activities. The slip he received from management had three boxes checked off in regard to cause for suspension. One said he disobeyed orders, although management would not explain to him how or when. It also said he did poor quality work, although he insisted his work was no different in quality than any other time and he had always been praised by management as a "line leader" and one of the highest paid workers. The third reason checked off as to why he was suspended was tardiness two days in a row. [REDACTED] came to work in a company hired van with workers from Tecate which is a 30-40 minute drive from the plant. The bus was late by 3 and 4 minutes arriving at the plant on these days -- a not unusual occurrence that never before had been penalized since the unwritten policy by Han Young has always been to allow 15 minutes tolerance. All the workers

in the van arrived with the same tardiness, yet [REDACTED] was the only one cited for suspension or any penalty.

The weekly meeting that was supposed to take place between the delegates and management on July 31 as had been agreed to by management in the persons of Kang and Escobedo on July 23 was canceled. Escobedo told the delegates that management had no interest in meeting with or negotiating anything with them.

In its place lengthy questioning sessions of one to two hours each were held individually with the delegates by Escobedo, who demanded to know names of union activists, plans of the union and information about supporters from the U.S.

On August 6, STIMAHCS filed an action for recognition to negotiate a collective bargaining agreement with Han Young before the CAB (See exhibit P, "Demanda para Titularidad"). On that same day delegate [REDACTED] was given two options by Escobedo: stop his union activities, for which he would be paid a \$2,000 bonus; or continue, and be fired without severance pay. He was then illegally fired, and not provided by management with any written statement as to the reason for his dismissal. He filed for reinstatement. (Exhibit Q)

On August 12 [REDACTED] and [REDACTED] both members of the union's Executive Committee, were given options similar to those given to [REDACTED] and were then illegally fired. They were told they were being fired because of their leadership within the union. Neither was provided a written statement giving reasons for their firing by management. Both filed for reinstatement (See Exhibits R and S). [REDACTED] has since accepted severance pay following the union election at Han Young.

On August 13 workers protested the illegal firings. [REDACTED] was physically attacked by Han Young manager [REDACTED] as he stood outside the company entrance speaking to other workers about the illegal firings. [REDACTED] filed criminal charges against [REDACTED] for physical assault, verbal abuse and threats (See Exhibit T) and actions were filed to keep [REDACTED] from leaving the country to avoid prosecution (See Exhibits U, V, W, X, Y).

On August 14, Mary Tong of the Support Committee for Maquiladora Workers spoke to I.C. Song of the Hyundai Precision America Human Resources Department in San Diego. He agreed that Hyundai has a "legal and moral responsibility" toward any violations of the law that might exist in the Han Young operations, but insisted that there were no violations, and that this would be readily verified by the Mexican government.

On August 15 Han Young's attorney Ricardo Estrada told the attorney for the fired workers that the workers could name the price the company would pay if they dropped the actions for reinstatement. The fired workers refused. Estrada also offered that the workers could run their own union as long as they kept it affiliated with the CROC. In a meeting that evening, the workers voted unanimously not to accept the offer.

During the first week of September Han Young transported 20 workers to Tijuana that it had recruited from the south eastern state of Vera Cruz, paying them more than workers with 5 years seniority and housing them in a location paid for by the company. These workers were kept separate from the other workers and overseen directly by the Korean management. Shortly after the new workers were hired, representatives of another official union were brought into the plant by management to meet with the workers. This union, affiliated with the Confederacion de Trabajadores Mexicanos (CTM) began to give out free carne asada and beer on Fridays. Management began to spread the word that Han Young would shut down if the independent union won, and that the workers must vote for the CTM.

A hearing was scheduled to be held on September 3 by the Tijuana Conciliation and Arbitration Board (CAB) to set a date for a union election. However, the CAB declared the hearing invalid on the basis of their own clerical error in typing an incorrect docket number (See exhibit Z). The workers believe this was simply a pretext to give the company more time to work against the union. CAB discounted claims by the attorney for STIMAHCS that the delay provides an advantage for management, which has already begun a harassment campaign against STIMAHCS members. After the aborted hearing, according to a reporter who feared reprisals if named, a member of the state government met with directors of Tijuana's television news programs secretly. They were ordered not to broadcast anything about the situation at Han Young including the aborted hearing. Recorded coverage on the local Televisa station was subsequently canceled.

Another health and safety inspection was conducted September 5 to determine if Han Young had complied with the measures ordered to be taken during the July inspection. The inspectors found that five orders had not been complied with. A representative of the health and safety commission, ██████████ told workers at a meeting afterward that he was so intimidated by Escobedo that when asked as representative of the workers to state any problems in the plant he did not say anything. (See Exhibit AA)

On September 8 ██████████ and ██████████ were illegally fired, in retaliation against ██████████, who had not been paid since August 9 before he filed his assault charges against the manager. His brother, ██████████ also had not been paid for two weeks. They all filed for reinstatement. (See exhibits BB, CC, DD, EE). Escobedo told ██████████ that he was being fired because the company believed he was the "hidden brain" behind the union effort. The others were told they were being fired because they were troublemakers because of their union activity.

On Sept. 10 the workers protested the additional illegal firings.

The September 25 hearing at the CAB was again supposed to set the date for a union election. The CROC called for the hearing to be suspended on the basis that the docket number of its contract with the employer was not mentioned in the legal papers. The CROC presented a new action calling for suspension of the proceedings on the basis that the CTM wanted to file for

recognition to represent the workers. The CROC representative left to make copies of the action to distribute to the other parties (See exhibit FF). Han Young workers began to march into the CAB building with signs declaring the CAB was cooperating with the boss to defy their rights under Mexican Labor law. The CAB called a recess, and the workers demonstrated outside. They announced to the media that they would be taking over the CAB building in protest if they were once again delayed in their right to a union election. The workers then marched to the Korean consulate where they demonstrated against Han Young's violations of Mexican labor law. After four hours the CAB set the date for an election. (See Exhibit GG).

On September 30 Han Young manager Lee called workers into his office one by one demanding that they sign a paper as to how they would vote. Workers were told that they would lose their jobs if they voted against the company, and that they must vote for the CTM.

On October 1 [REDACTED] was fired illegally during a meeting in which management told all the workers that he was being fired because he is a union activist and that the plant would be shut down if the independent union wins. [REDACTED] was the most active member of the health and safety commission involved in investigating, documenting and raising to management concerns for prevention of health and safety problems in the plant. He was given no written notice of why he was fired. He filed for reinstatement. (See Exhibit HH.)

According to reports of workers at the Tijuana Labor Board who asked not to be named, on Thursday October 2, the CROC representatives met with Governor Teran Teran of Baja California to insist he demand the resignation of local CAB President Antonio Ortiz. According to these reports, CROC insisted that Ortiz never should have allowed for the union election and could not be trusted to ensure the independent union is kept from winning. (See Exhibits II and JJ, articles from *Zeta* and *El Mexicano* about the resignation). On Friday October 3, according to workers at the CAB, Teran requested the resignation of Tijuana CAB President Antonio Ortiz, and Ortiz resigned.

On Monday, October 6, the union election was held. There were only two Mexican media people present. It was learned later by workers from reporters at Univision TV and *El Mexicano* that a press release had been sent to the Tijuana media early Monday morning purporting to inform them that the election had been canceled.

Fourteen international observers arrived shortly before the voting began at noon, including representatives of human rights organizations, unions and academics from the U.S. whose presence was requested by Jose Angel Penaflor, attorney for the workers. Penaflor had requested international observers on the basis that union elections involving independent unions challenging official unions in the past have been wrought with fraud, intimidation and, in many instances, violence. It was thought that the presence of international observers could deter such activities as well as document any irregularities.

The workers learned that the company had never provided a list of current personnel to the CAB

to cross check against the voting workers' identification, and the CAB did not insist on receiving such a list before it began the vote. The fifty-three Han Young workers waiting in line at the CAB voted unanimously for STIMAHCS between noon and 12:30. They voted aloud with representatives of the CAB, management and STIMAHCS observing, amidst several instances of obvious intimidation and implied reprisals. For example, after [REDACTED] who cast the first vote and voted for STIMAHCS, a management person came up to him and demanded to know his name. According to international observer reports, between 12:15 PM and 12:33 PM several CROC representatives, who were described as large and intimidating men, went in and out of the voting room and up and down the line of waiting voters. Some leaned against the wall near the voters glaring at them. Observers who were at the union election at the Plasticos Bajacal maquiladora in December of 1993 recognized some of the men as people hired at that time by the CROM to intimidate voters. One CROC representative walked up and down the line of voters, very closely eyeing the workers one by one.

One person who was not a worker jumped into the end of the line and voted for the CROC. The workers informed the CAB his vote is not legitimate and that they planned to contest it. The line of workers waiting to vote ended and the CAB declared the election closed.

Shortly after this a bus from Han Young arrived outside the CAB building. Thirty-five persons came from the bus, including nine administrative and management personnel, all the Han Young supervisors, the company nurse, administrative secretary and director of human resources Escobedo; two people who do not work at Han Young at all and 14 new hires. At approximately the same time there arrived ten CROC representatives, who appeared to be there for the purpose of trying to provoke a violent confrontation. They entered the building with the new arrivals and begin to confront workers with jeering and insults.

A worker reported that Han Young manager Kang and I.C. Song of Hyundai Precision America were outside in a white car. Jose Mandujano, former President of the CAB, well known as a representative for the CROM and attorney for maquiladora owners for many, many years, arrived around the same time as the bus and appeared to be sending directions to CAB personnel via runners and orchestrating the proceedings from outside the voting room. The workers report that he had been hired sometime in the previous week by Han Young. Carlos Perez Astorga, Secretary General of the CAB, who was overseeing the elections, was a former employee of Mandujano.

Initially, the Han Young workers tried to block the entrance of the new arrivals. There was a noisy confrontation in which the Han Young workers shouted that the people from the bus were not legitimate voters, and the people from the bus were shouting to them to step aside.

Two men arrived, one carrying a cell phone. He listened intently to conversations of workers being interviewed by U.S. media personnel. He and his companion then tried to enter the voting room, initially refusing to give identification. The workers blocked their entrance. After a minute the two men identified themselves as representatives of the state government. The two entered

the voting room and spoke to representatives of the CAB. Immediately after this conversation, Sec. General Astorga announced that the CAB would nullify the election if the new arrivals were not allowed in the room to vote. The workers began to chant "Fraud! Fraud!!" from outside the voting room. The workers felt that they had no choice but to allow the illegitimate votes to proceed. However they requested the right to have five workers as observers present in the room to document the names of the new arrivals voting.

The CAB agreed to the workers presence. However, unlike the first part of the voting in which observers were allowed to stand behind the voting tables to be able to hear the workers' responses and view the identification documents presented, this time the CAB insisted that the observers must stand on the other side of the table. This disallowed observers from seeing the identification documents when they were presented. As the new arrivals enter, many were not asked for identification. Those that were oftentimes could not present any company identification and their federal voter registration cards were accepted instead. Some could not even remember the name of the company. Some had to ask for assistance from others in the line to remember how they were told to vote. Some simply responded "the one with management" when asked which union they vote for. When workers outside the voting room heard that the new arrivals are not even being asked to present ID, they begin to chant "Fraud! Fraud!" again. The CAB officials insisted they were asking for ID and claimed workers would have the chance to object to any votes they wanted to after the elections.

Unlike in the first part of the election where only one worker per each of the five voting spots was allowed to enter the voting room at a time, this time, CAB officials escort voters in 10 to 15 at a time, making it difficult for the observers to get close enough to the tables to hear voters' responses. It appeared to observers that the CAB was trying to create confusion and to be able to accuse them of obstruction by insisting on bringing so many voters at a time into a very small room.

CAB officials began to make remarks to observers that their presence was causing problems and was an obstacle to the proceedings.

As it became obvious to observers that even if all the illegitimate votes are counted the vast majority of votes are for STIMAHCS, the CROC representatives and Mandujano began to huddle to discuss strategy. They begin to talk aloud about the need to challenge the presence of international media and international observers as having dark motives against the interest of Mexican workers and interfering in the election. They talked with journalists from El Herald and El Sol, who quoted them as saying that "there obviously is some hidden motivation why there are so many observers from the U.S. at a Mexican union election; that clearly these observers instigated this action by the workers and are trying to create problems for companies with their workers right now because they want Mexican companies to shut down or lose foreign investment."

Shortly after this, a man claiming to be a representative of the Secretary General of Gobernacion, the Mexican Department of Internal Affairs, arrived and told Mary Tong, who led the observer

delegation, that the observers must leave the election proceedings. He claimed that it was illegal for them to be present in a legal proceeding in Mexico. He then asked seven municipal police officers to escort them out, turned on his heel and left, refusing to discuss the matter with the observers. [REDACTED] legal assistant to Jose Angel Penaflor, challenged the police, telling them that the observers were requested by the attorney for the workers precisely because they anticipated fraud in this election and that the only way to prevent or document it was the presence of international observers. He called on the police to respect the law. The police replied that they would not escort the observers out.

The CAB official announced it was closing the proceedings, it distributed copies of the proceedings and each of the ballots (see Exhibit LL) to the parties involved, and stated there would be a brief hearing October 9 to hear any objections to the votes. The ballot count was declared to be 54 to 34, in favor of STIMAHCS. Therefore even if all votes are counted, STIMAHCS clearly won the election.

On Tuesday, Penaflor's office learned about the false press release sent out Monday morning and the circumstances surrounding the resignation of Ortiz as President of the CAB. They also learned that reporters were being told that the October 9 hearing would be closed to the press and anyone other than attorneys for the three parties. Penaflor and [REDACTED] called a press conference for noon October 9 outside the CAB offices to discuss the concerns raised by these circumstances and the expulsion of observers from the election by Gobernacion. (See exhibit MM, press release October 8)

When Penaflor and [REDACTED] arrived outside the CAB building October 9, they learned that Mandujano had called for a press conference at the same time as theirs to attack "foreign intervention in Mexican labor affairs that is destabilizing the industry and geared toward threatening Asian and other investments in Tijuana." He claimed that it is more important than ever for unions to cooperate with management, and raised questions as to the motives of U.S. observers and media personnel (See Exhibit NN, El Mexicano article October 10).

A representative of Gobernacion arrived at the workers' press conference looking for Mary Tong and James Clifford who were both observers at the election and both of whom work for the Support Committee for Maquiladora Workers. When a reporter asked why Gobernacion is looking for them, the representative replied, "Because they are not allowed to be in the country." The representative then told Sam Dillon, Mexican correspondent for the New York Times that he had no right to be at the press conference unless he had requested an interview with someone in advance. Dillon called Gobernacion in Mexico City who apologized to him.

The hearing took objections to two votes from the CROC and to 25 from STIMAHCS and made no decision. Another hearing was set for October 16 for the parties to present the reasons for their objections (See Exhibit OO).

During the week following the election, Han Young fired four of the workers most vocal against

the CAB allowing illegitimate votes: [REDACTED] who were both observers on behalf of the workers inside the voting room during the second part of the election, [REDACTED] who was a member of the health and safety commission (meaning that two of the three worker representatives required by Federal Labor Law have now been fired), and [REDACTED] who was vocal in leading chants of "Fraud!" during the election proceedings. The latter two accept their severance pay and sign papers with the management that they will not pursue any action against the company. [REDACTED] file for reinstatement (See Exhibits PP and QQ). Han Young general manager announces to the workers on the shop floor that the company will recruit and transport 50 more workers from Vera Cruz and fire all the STIMAHCS supporters. (See Exhibit RR, Affidavit of [REDACTED].)

The CAB hearing on October 16 heard the objections to votes from each party and closed with the CAB statement that it would "reserve a prudent amount of time for acknowledgment and judgment by those who maintain an intimate relationship with the controversy before us" before notifying the parties of their determinations. (See Exhibit SS.)

V. Impending Irreparable Harm Against the Rights to Freedom of Association, Protection of the Rights to Organize and the Rights to Bargain Collectively and Persistent Pattern of Failure to Enforce Mexican Labor Law

The continued, unwarranted delay by the CAB to certify of the election constitutes irreparable harm depriving Han Young workers of their right to freedom of association, protection of the right to organize and the right to bargain collectively.

The facts of the Han Young case illustrate five ways in which the Mexican government persistently fails to enforce its laws protecting workers:

First, the Mexican government has failed to "ensure that tribunals that conduct or review (labor) proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter." [Article 5.4];

The official delay to certify the election without justifiable cause comes as part of a pattern of practice by the CAB that is clearly weighted in favor of the official union CROC. This pattern of practice is exemplified in CAB officials' attitude of open hostility during the election toward the Han Young workers' objections to the CAB's acceptance of illegitimate votes and the CAB's refusal to check identification. It was further exemplified in the excuse used by the CAB to delay setting an election date and in the circumstances surrounding the resignation of CAB President Ortiz and the arrival of Governor's representatives at the election in conjunction with management personnel. The apparent partiality of the governor's office following pressure from the CROC obvious holds great sway over the CAB given the fact that its President is an appointee of the Governor and serves at his pleasure. The CAB has failed to pursue any action against the series of illegal firings by the Han Young management. This pattern of practice, particularly now when the company is threatening to fire and replace all union supporters sends a

clear message to the Han Young workers that CAB officials favor the official unions and do not want to allow the independent union its right to collective bargaining with Han Young. In this case CAB officials have demonstrated beyond doubt a substantial interest in seeing that the outcome goes against the independent union because of the political pressure emanating from the Governor's office and the official union who are a powerful force to reckon with in Tijuana.

Second, it has failed to "ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent" [NAALC Article 5.1];

The practice of the CAB as described in the statement of facts has demonstrated marked partiality toward protecting company and official union efforts to deny workers' their right to organize. Its variance in its conduct between the first and second parts of the election were obvious and apparent examples of unfairness and bias: during the first part workers were asked for company identification, observers were allowed behind the tables and voters were told to enter one by one; during the second part no company identification was solicited or presented by many voters, voters who could not even name their employer or who described themselves as management or who stated their date of employment within the past few weeks were allowed to vote without question and voters were run in three at a time to the tables. Even if the CAB does certify the election ultimately it is doing so in such a manner as to ensure irreparable harm against the collective bargaining unit. If allowed to continue in this manner the composition of employees within the bargaining unit will have been changed and subject to tremendous intimidation.

If the CAB somehow determines not to certify the STIMAHCS victory, any new election would be tainted, as the CAB's actions combined with the company's continued intimidation, firings, and threats would have destroyed the entire atmosphere.

Third, it has failed to see that labor "proceedings...do not entail...unwarranted delays" [Article 5.1(d)];

The facts of the Han Young case demonstrate a pattern by the CAB of using delays to avoid provision and protection of workers' rights while allowing management time to engage in harassment, intimidation and illegal dismissals of independent union supporters. The postponement of the September 3 hearing to set the date of the election on the basis of the CAB's own typographical error despite the fact that all parties were present is an example of unwarranted delays that obviously serve to provide greater advantage to the company in its efforts to defy workers' rights to organize. The workers assert that the September 16 hearing would have led to a similar postponement save for their demonstration in the CAB building and threats to take over the CAB building if they were once again denied their right to an election.

The fact that all of the reinstatement cases before the CAB are still pending without resolution further points to the CAB's well-known pattern of using stall tactics as a way to avoid decisions

that would uphold labor law against the vested interests of companies and official unions.

Fourth, it has failed to provide that final decisions on the merits of the case in (labor) proceedings are made available without undue delay to the parties to the proceedings [NAALC Article 5.2(b)];

Even assuming the election is ultimately certified by the CAB, the collective bargaining atmosphere will have been permanently tainted. To all who were present or who reviewed the ballots, the vote in favor of STIMAHCS was clearly decisive even if all illegitimate votes are counted. However, the CAB has still not certified the election more than three weeks later. The two hearings after the election appear to be a purposeful attempt to create undue delay that gives the company time to carry out its openly-announced plan to destroy the independent union by firing and replacing the workers.

The CAB's delay also provides Han Young more time to conduct its psychological warfare against the workers to frighten them into accepting severance when they are fired, rather than filing a reinstatement petition, and ultimately to frighten any workers who are not fired into accepting inferior terms in any negotiations that may ensue.

Fifth, it has failed to "effectively enforce its labor law" regarding protection of workers rights to organize by failing "through appropriate government action such as initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law" [Article 3.1(g)].

Under Mexican law, similar to supremacy principles in U.S. law, international treaties signed and ratified by Mexico take on the force of law, and in cases where conflicts exist between legal provisions and international treaty obligations, the latter apply. Article 133 of the Mexican Constitution states, "This Constitution, the Laws of the Congress of the Union derived thereof and all treaties that agree with same, that are presently or further signed by the President of the Republic with the approval by the Senate, shall constitute the Supreme Law for the entire Union. The judges of each State shall observe said Constitution, laws and treaties regardless of provisions contrariwise that may exist in the constitutions or laws of the States". Federal Labor Law, Article 6, also provides that "the respective laws and treaties signed and approved under the terms of Article 133 of the Constitution shall apply to labor relations in all matters that benefit workers, as of the valid date."

Thus the Conventions of the International Labor Organization ratified by Mexico, and the obligations of the NAALC, are fully enforceable legal provisions under Mexican law.

ILO Convention 87, Art. 2, which Mexico ratified in 1950, protects the right of workers and employers, without distinction whatsoever, "to establish and ... to join organizations of their own choosing without previous authorization." Art. 3, sec. 2, stipulates that "public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise

thereof." The "lawful exercise" of the right of freedom of association must include, at a bare minimum, the right to contest without interference from authorities, for the collective bargaining rights. By the several actions described above, the government of Mexico has placed itself in serious contempt of this Convention and in violation of its provisions.

ILO Convention 135, concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, was ratified by Mexico in 1974. Art. 1 states "Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities . . ." The Mexican Government has allowed, without taking any preventive or punitive action, the dismissal of two of the three worker representatives of the Han Young *comision mixta*, the firing of twelve Han Young workers who voted for STIMAHCS representation, and the threat of firing all 54 workers who so voted. This pattern of failure to protect workers' representatives in the undertaking is in conspicuous and open violation of Mexico's legal obligation under Convention 135, and is an indisputable example of its contempt for its international treaty obligations.

VI. Actions Requested of the U.S. NAO

For the foregoing reasons, the petitioners request the U.S. NAO to:

1. Through appropriate means urge that the CAB immediately certify the obvious victory by STIMAHCS in the union election of October 6 and vigorously enforce all other Mexican laws that would ensure full protection for the Han Young workers regarding their rights to organize and bargain collectively, to engage in legitimate union activity without interference or retaliation by the employer, and to work under conditions that meet the legal requirements under Mexican law; specifically, that the CAB require Han Young to:

- (a) Stop firing workers as a means to irreparably harm the independent union effort and deny workers their right to organize;
- (b) Desist from harassing, intimidating, and penalizing workers involved in union activities and from offering money and other incentives to workers to stop their union activity or inform the company about activities of union activists;
- (c) Cease pressuring workers into accepting statutory severance pay and relinquishing claims for reinstatement, and immediately offer reinstatement with full back pay and lost benefits as required by Mexican Labor Law to:

- (1) [REDACTED]
- (2) [REDACTED]
- (3) [REDACTED]
- (4) [REDACTED]
- (5) [REDACTED]
- (6) [REDACTED]

(7) [REDACTED]
(8) [REDACTED]

2. Initiate a review pursuant to Article 16 of the NAALC addressing the conduct of Han Young (and Hyundai as the responsible beneficiary under Mexican Labor Law) and the failure of Mexico to enforce its labor laws with respect to the issues raised in this matter, in particular, those laws and regulations, or provisions thereof, that are directly related to freedom of association and the protection of the right to organize, including interference in union elections involving attempting fraud and promotion of perjury; retaliation against employees for participation in union organizing activities, voting for the independent union and objecting to illegitimate voters in the election; initiating plans to fire replace the all employees who voted for the independent union.

3. Hold public hearings on this case in a location, preferably in Tijuana, that would allow the maximum number of workers and other participants and expert witnesses involved to provide testimony and additional information to the NAO without incurring undue personal expense or hardship, and having first made adequate arrangements for translation, and having provided adequate notice to Complainant, pursuant to Section E (3) of the U.S. NAO regulations.

4. That the Secretary of the U.S. NAO initiate a process to require the Mexican government to end the favoritism and political discrimination exhibited by CABs in granting legal recognition and bargaining rights to unions, and make clear the process whereby workers can register and achieve recognition for the union of their own choosing, in order that Mexican authorities come into compliance with their obligations under the NAALC to: "ensure that tribunals that conduct or review [administrative, quasi-judicial, judicial and labor tribunal] proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter." Petitioners believe that such a process must go beyond the level of Ministerial Consultations pursuant to Part Four, Article 22 of the NAALC, because the obligation in question is not merely to "promote" compliance with labor laws through certain limited actions as explained in Part Four, Article 3, but rather to "ensure" that procedural guarantees are met as contained in Article 5. The language in this section -- "obligation to ensure" -- clearly entails a stronger commitment than that contained in other parts of the NAALC dealing with question of freedom of association and the right to collective bargaining, and must thus be enforced with stronger measures than the consultative mechanisms reserved for these other matters.

Respectfully Submitted,

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